

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

BDG GOTHAM RESIDENTIAL, LLC, et al.,

Plaintiffs,  
-against-

WESTERN WATERPROOFING COMPANY,  
INC., et al.,

Defendants.

WESTERN WATERPROOFING COMPANY,  
INC.,

Plaintiff,  
-against-

ZURICH AMERICAN INSURANCE  
COMPANY, et al.,

Defendants.

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19-CV-6386 (CM) (BCM)

20-CV-3199 (CM) (BCM)

**ORDER**

**BARBARA MOSES, United States Magistrate Judge.**

For the reasons stated on the record during today's telephonic status conference, it is hereby

ORDERED that:

1. Discovery in Delay Damages Action.

- a. Written Fact Discovery. The parties in *BDG Gotham Residential, LLC, et al., v. W. Waterproofing Co., Inc. et al.*, No. 19-CV-6386 (the Delay Damages Action) shall, when serving fact discovery demands, notices, responses, and objections, and when producing documents (collectively, Written Discovery Materials), contemporaneously provide copies of or access to Written Discovery Materials to Starr Indemnity & Liability Company (Starr), Berkley Insurance Company, Navigators Insurance Company, Philadelphia Indemnity Insurance Company, and Markel American Insurance Company (together, the Excess Insurers), regardless of the Excess Insurers' party status in the Delay Damages Action, without the need for a formal request. Providing copies or access to counsel of record for Starr will satisfy this obligation.
- b. Fact Depositions. The parties in the Delay Damages Action shall provide notice of all fact depositions taken in that action to the Excess Insurers, who may attend such depositions as observers, regardless of their party status in the Delay Damages Action. Notice to counsel of record for Starr will satisfy this obligation. Nothing in this Order permits an Excess Insurer that is not

a party to the Delay Damages Action to interpose questions, raise objections, or otherwise participate in the deposition other than as an observer.

- c. All Excess Insurers are bound by the Stipulated Protective Order, dated September 16, 2022, in the Delay Damages Action. (Dkt. 139.)
2. Discovery in Coverage Action. Defendant American Zurich Insurance Company (American Zurich) having filed its Answer to the Supplemental Amended Complaint in *W. Waterproofing Co., Inc. et al. v. Zurich Am. Ins. Co., et al.*, No. 20-CV-3199 (the Coverage Action) on November 7, 2022 (Dkt. 324), the parties in the Coverage Action shall provide copies of or access to all formal discovery demands, notices, responses, and document productions exchanged to date. In addition:
  - a. American Zurich shall serve its automatic disclosures, as required by Rule 26(a)(1), on **December 1, 2022**.
  - b. As promptly as possible, but in no event no later than **December 15, 2022**, American Zurich shall propound its written discovery requests, if any, under Rules 33 and 34.
3. Joint Status Conference. The Court will hold a joint status conference on **January 9, 2023**, at **10:00 a.m.**, in Courtroom 20A, 500 Pearl Street, New York, New York. No later than **January 4, 2023**, the parties shall file a joint status report in each Action. If no controversies exist at the time of the joint status letter, the parties may request that the conference be held telephonically.

Dated: New York, New York  
November 17, 2022

**SO ORDERED.**



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**BARBARA MOSES**  
**United States Magistrate Judge**